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II. FACTS

Plaintiff Gizachew Wondie filed this 42 U.S.C. § 1983 civil rights action in December 2021 against King County, King County Sheriff's Office,¹ and two King County Sheriff's detectives, defendants Kathleen Decker and George Alvarez. Wondie generally alleges that Detective Decker violated his constitutional rights by securing a search warrant through "judicial deception." Wondie contends that in obtaining the warrant, Decker falsely represented to a King County Superior Court judge that: (1) forensic testing of shell casings recovered from a murder scene matched a gun owned by Wondie; (2) Wondie had a propensity for violence, and (3) was an individual pictured in a social media post of suspected gang members that were involved in the homicide. *See* Dkt. 1 (plaintiff's complaint) at 9. Wondie contends that defendant Alvarez was the "lead officer of the SWAT" team that took him into custody when he was arrested on December 6, 2018. *Id.*, at 5 (para. 4.2).

Wondie alleges a *Monell*² "custom and policy" claim against defendant King County and the King County Sheriff's Office. He maintains that King County implemented and followed "unconstitutional policies, customs and procedures" in violation of his rights guaranteed under the Fourth Amendment of the United States Constitution. *Id.*, at 12 (para. 5.7). He further contends that King County "knowingly, recklessly, or with deliberate indifference and callous disregard of [his] rights, failed to instruct, supervise, train, control and/or discipline" Decker and Alvarez. *Id.*, at 12 (para. 5.8). Wondie's complaint, however, alleges no facts supporting this claim.

¹ King County is not a separate entity from the "King County Sheriff's Office" (KCSO). As a County department, KCSO is not a separate entity with the capacity to be sued. *See DiMaio v. County of Snohomish, Department of the Sheriff*, 2107 WL 3288177 *3 (W.D.Wash. 2017) (plaintiff must name the county itself as a party to action; not a municipal department – the capacity to be sued is limited to the county itself). Thus, defendants "King County" and "King County Sheriff's Office" are one and the same and will be referred to as "King County" herein.

² *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658 (1978).

III. ARGUMENT

A. Rule 12(c) Standards

Federal Rule of Civil Procedure 12(c) states that “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Under Rule 12(c), the Court can grant judgment on the pleadings when—accepting all factual allegations in the complaint as true—there is no issue of material fact in dispute and the moving party is entitled to judgment as a matter of law. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). The Ninth Circuit has stated that the Rule 12(c) standard is “substantially identical” to the Rule 12(b)(6) standard. *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012).

To survive a motion to dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Levitt v. Yelp!, Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014) (requirements of notice pleading are met if plaintiff makes a short and plain statement of their claims). A claim is plausible on its face when “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The allegations must be enough to raise the right to relief above a speculative level. *Twombly*, 550 U.S. at 555.

If a court finds that the plaintiff did not allege sufficient facts “to raise a right to relief above the speculative level” and support a cognizable legal theory, it may dismiss the complaint as a matter of law. *Twombly*, 550 U.S. at 555. At this stage, a court must take all well-pled allegations of material fact as true and construe them in the light most favorable to the plaintiff. *Malibu Textiles, Inc. v. Label Lane Int’l, Inc.*, 922 F.3d 946, 951 (9th Cir. 2019).

1 B. Custom and Policy (*Monell*) Pleading Requirements.

2 To state a claim against a municipality under Section 1983, a plaintiff must allege facts
 3 supporting the reasonable inference that a municipality adopted a policy, custom, or practice that
 4 amounted to deliberate indifference to the plaintiff's constitutional right and resulted in a
 5 deprivation of the constitutional right. *See Monell*, 436 U.S. at 691-92; *see also Plumeau v. Sch.*
 6 *Dist. No. 40 Cty. of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997). A plaintiff can plead a policy by
 7 supplying sufficient facts demonstrating that the municipality (1) adopted an official policy or had
 8 an established custom that led to the constitutional violation, (2) failed to act in a way that amounts
 9 to a policy of deliberate indifference to constitutional rights, or (3) that an official with final policy-
 10 making authority committed the constitutional violation or ratified a subordinate's violation. *See*
 11 *Clouthier v. Cty. of Contra Costa*, 591 F.3d 1232, 1249 (9th Cir. 2010), *overruled on other grounds*
 12 *by Castro v. Cty. of L.A.*, 833 F.3d 1060 (9th Cir. 2016). A plaintiff's allegations "may not simply
 13 recite the elements" of municipal liability and instead must "put forth additional facts regarding
 14 the specific nature" of the alleged policy and its relationship to the alleged constitutional violation.
 15 *AE ex rel. Hernandez v. Cty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012).

16 To adequately plead municipal liability based on a failure to train or supervise, a plaintiff
 17 must allege that (1) the current training program is inadequate given the tasks the officers must
 18 perform; (2) the failure to train amounts to deliberate indifference of the rights of the people with
 19 whom the officers will come into contact; and (3) the inadequate training actually caused the
 20 deprivation of the constitutional right. *See Dougherty*, 654 at 900. "A municipality's culpability
 21 for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick*
 22 *v. Thompson*, 563 U.S. 51, 61 (2011). The plaintiff must therefore allege facts that the defendant
 23 disregarded known or obvious consequences arising from a particular omission in its training

1 program that would cause its officers to violate constitutional rights. *See Flores v. City of L.A.*,
 2 758 F.3d 1154, 1159 (9th Cir. 2014).

3 C. Plaintiff Wondie's complaint fails to allege sufficient facts to support a "custom and
 4 policy" claim against King County.

5 In this case, the entirety of "facts" Wondie alleges to support his "custom and policy" claim
 6 against King County is contained in three paragraphs (nos. 5.7, 5.8, and 5.9) on page 11 of his
 7 Complaint, under the heading "Cause of Action":

8 5.7 Plaintiff was injured by the unconstitutional policies, customs
 9 and procedures implemented and followed by the King County
 10 Sheriff's Department in violation of his civil rights as provided by the
 11 4th and 14th Amendments to the Constitution of the United States and
 12 King County is liable under 42 U.S.C. §1983 and §1988.

13 5.8 Defendants King County and King County Sheriff's Department
 14 knowingly, recklessly, or with deliberate indifference and callous
 15 disregard of Plaintiffs rights, failed to instruct, supervise, train, control
 16 and/or discipline on a continuing basis Defendant officers and other
 17 officers in their duty.

18 5.9 Defendants King County and King County Sheriff's Department
 19 had power to prevent the commission of the aforesaid wrongs, could
 20 have done so by reasonable diligence, but failed to do so with
 21 deliberate indifference and callous disregard of the rights of Plaintiff.

22 Wondie fails to identify what policies, customs, and procedures are unconstitutional and
 23 led to a violation of his civil rights. Wondie fails to identify what training and supervision
 practices are deficient or how the deficiencies harmed him. *See Chen v. D'Amico*, 2018 WL
 1508909 *5 (W.D.Wash. 2018); *Young v. City of Visalia*, 687 F. Supp. 2d 1141, 1149-50 (E.D.
 Cal. 2009) (concluding that the complaint failed to identify "what the training and hiring
 practices were, how the training and hiring practices were deficient, or how the training and hire
 practices caused Plaintiff's harm"). Nowhere does Wondie allege facts giving rise to the
 plausible inference that the County's existing training and supervisory programs are deficient.

1 *See generally id.* And he offers a mere conclusory allegation stating that the County’s failures
 2 amount to deliberate indifference. *See Chen*, 2018 WL 1508909 *5 (conclusory allegation that
 3 City’s training and supervisory programs were inadequate is insufficient; plaintiff failed to state
 4 a Section 1983 claim based on a failure to train and supervise). For these reasons, Wondie fails
 5 to state a Section 1983 claim based on a failure to train and supervise. Moreover, his complaint
 6 fails to allege a “custom and policy” claim against King County on any other ground.

7 IV. CONCLUSION

8 Because plaintiff Gizachew Wondie fails to adequately allege a “custom and policy”
 9 (*Monell*) claim against King County and King County Sheriff’s Office for failure to train and
 10 supervise (or any other theory), King County and King County Sheriff’s Office asks the Court to
 11 dismiss his claims as a matter of law pursuant to Federal Rule of Civil Procedure 12(c).

12
 13 DATED this 2nd day of June, 2022, at Seattle, Washington.

14
 15 DANIEL T. SATTERBERG
 16 King County Prosecuting Attorney

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on June 2, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF E-filing system, which will send notification of such filing to the following:

<p><i>Attorney for Plaintiff</i></p> <p>Dan N. Fiorito, III, WSBA #34009 The Law Office of Dan N. Fiorito III 2470 Westlake Ave N., Suite 201 Seattle, WA 98109 Telephone: (206) 299-1582 Fax: (206) 770-7590 Email: dan@danfiorito.com</p>	<p><i>Attorneys for Defendant George Alvarez</i></p> <p>Scott C. Wakefield, WSBA #11222 Dan Kirkpatrick, WSBA #38674 Zach Parker, WSBA #53373 Wakefield & Kirkpatrick, PLLC 17544 Midvale Avenue No., Suite 307 Shoreline, WA 98133 Telephone: (206) 629-5489 Fax (206) 629-2120 Email: swakefield@wakefieldkirkpatrick.com dkirkpatrick@wakefieldkirkpatrick.com zparker@wakefieldkirkpatrick.com</p>
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I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct

DATED this 2nd day of June, 2022

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